IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORIDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITON NO.2516 OF 2006

Shri Ashok Muthana,Chairman, M/s.
Swastic Rubber Products Ltd. & Ors. ..Petitioners.

V/s.

The Employees Provident Fund
Organization & Ors. ..Respondents.

Mr.R.A.Dada, senior counsel with K.S.Bapat i/b. Rahul Nerlekar for petitioners.

Dr.R.S.Sundram i/b. P.V.Nelson Rajan for respondents.

CORAM : V.C. DAGA, J.

DATED : 28TH APRIL, 2006.

P.C. :-

1. Rule, returnable forthwith.

2. Dr.R.S.Sundram waives service for the respondents.

3. Heard finally with the consent of the parties. Perused the petition.

4. This petition is directed against the order dated 3rd April, 2006 passed by Mr.K.D.Mulla, Provident Fund Commissioner, Regional Provident Fund Office, Pune

holding that the petitioner is liable to pay the P.F. dues with further directions to pay the same within 15 days from the date of the said order.

5. The factual matrix is that the earlier order passed by Mr.K.D.Mulla, the Provident Fund Commissioner, Pune dated 7/2/2006 was the subject matter of challenge in the Writ Petition No.762 of 2006 which was heard by this Court on 20th March, 2006. The said order was allowed. By consent of parties, order was set aside. Proceedings were remitted back to the Commissioner with specific direction to hear the petition and decide all the contentions which the petitioner may raise by a reasoned order.

6. Pursuant to the aforesaid order, petitioner appeared before Mr.K.D.Mulla on 3rd April, 2006 at 1.00 p.m. According to the Officer, the petitioner was heard; whereas the petitioner has seriously disputed the assertion made in the order.

7. Having gone through the entire text of the impugned order, it is very difficult to put a finger on any single line of the order to demonstrate consideration of the provisions of Rule 73 of II Schedule of the Income Tax Rules. If one goes through the impugned order, hardly there is any consideration

of the said provisions of Rule 73 of II Schedule Income -tax Rules, which were specifically raised by the petitioner. As a matter of fact, the Commissioner was directed to specifically consider all the contentions raised by an order dated 20/3/2006. The impugned order suffers from not only serious non application of mind but also demonstrates non compliance of the directions issued by this Court vide 20th March, 2006.

8. Mr.Mulla had heard this matter on two occasions. On both the occasions, he failed to follow the mandate of law and also the directions issued by this Court vide 20th March, 2006, hence it is all the more necessary that some other higher officer should hear this matter once again.

9. Since the impugned order was passed by Mr. K.D.Mulla, Provident Fund Commissioner, Regional Provident Fund Office, Pune, he is bound to be obsessed by his own views while deciding the matter on remand.

10. Faced with the above situation, Mr.Sundram, learned counsel for the department fairly suggested and urged that let this matter be remanded to any other senior Officer with direction to deal with all the contentions raised in this petition.

11. Mr.Sundram has suggested the name of Mr.Ajeet Kumar, Regional Provident Fund Officer, Pune. The petitioner has no objection to go before Mr.Ajeet Kumar.

12. In the above view of the matter, without going into detailed examination of the impugned order and discussions thereto and looking to the consensus between the parties, the impugned order is set aside. The proceedings are remanded back to Mr.Ajeet Kumar, Regional Provident Fund Officer, Pune with directions to grant personal opportunity of hearing to the petitioner and decide all the contentions by reasoned order which the petitioner may raise with assistance of case laws so as to enable this Court to read the mind of the adjudicating authority in the event of challenge to the order before this Court.

13. The petitioner is directed to appear before Mr.Ajeet Kumar, Regional Provident Fund Officer, Pune on 12th May, 2006. It would be proper on the part of the petitioner to file his written submissions three days in advance so that he can make his oral submissions before the authority on 12th May, 2006. It would be open for the petitioner to take the assistance of the advocate, if so advised. All rival contentions are kept open.

14. It is needless to mention that so long as the matter is not decided, no coercive action shall be taken by the respondents against the petitioner. In the event the order is adverse to the petitioner, the same shall not be given effect to for a period of 4 weeks from the date of the communication of the said order.

15. Petition stands disposed of. Rule is made absolute in the above terms with no order as to costs.

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